

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**  
One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 727-2293

PATRICK McNAMARA,  
Appellant

v.

G2-12-84

CITY OF QUINCY,  
Respondent

Appellant's Attorney:

Shelly Taylor, Esq.  
The Taylor Law Group  
2 Canal Park: 5<sup>th</sup> Floor  
Cambridge, MA 02142

Respondent's Attorney:

Deirdre Hall, Esq.  
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1305 Hancock Street  
Quincy, MA 02169

Commissioner:

Christopher C. Bowman

**DECISION ON RESPONDENT'S MOTION TO DISMISS**

On May 6, 2012, the Appellant, Patrick McNamara, who is currently employed as a labor service employee for the City of Quincy (City), filed a bypass appeal with the Civil Service Commission (Commission), contesting his non-selection to the labor service position of Park Maintenance Person, an entry level position.

A pre-hearing conference was held on May 29, 2012. The City filed a Motion to Dismiss and the Appellant filed an opposition.<sup>1</sup> A motion hearing was held on July 30, 2012. The City may fill labor service positions by making: 1) an original appointment (Section 28); or 2) a promotional appointment or change in employment of a permanent employee (Section 29).

Since the City chose to file this labor position through an original appointment, Mr. McNamara is not aggrieved and has no standing to file this appeal. Thus, his appeal is dismissed.

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<sup>1</sup> Counsel for the Appellant was granted multiple extensions for submitting a brief. The final brief received by the Commission via email appears to be incomplete. When notified, counsel indicated that the brief would be re-sent within a week. No additional correspondence was received by the Commission.

### *Background*

Mr. McNamara has served as a labor service employee in the title of MEO Laborer for the City since April 30, 2008.

The City maintains a labor service roster for various labor service positions in the City. Mr. McNamara's name does not appear on the labor service roster for the position of Park Maintenance Person.

The City, consistent with provisions of the applicable collective bargaining agreement, posted the Park Maintenance Person internally and two incumbent employees applied: Patrick McNamara and James McDonough.<sup>2</sup>

The City ultimately decided to make an original appointment under Section 28 of the civil service law and hire an external candidate to fill the Park Maintenance Person position.

### *Discussion*

So called "labor service" positions are those jobs for which applicants do not have to take a competitive examination, and appointments are made on the basis of priority of registration. (See G.L. c. 31, §§ 1, 28-29)

G.L. c. 31, § 28, which pertains to labor service *appointments*, states in relevant part:

"... the names of persons who apply for employment in the labor service ... of the cities and towns shall be registered and placed, in the order of the dates on which they file their applications, on the registers for the titles for which they apply and qualify. The name of any such person shall remain on such register for not more than five years ... The names of veterans who apply for employment in the labor service shall be placed ... ahead of the names of all other persons."

Section 19 of the Personnel Administration Rules (PAR.19), promulgated by HRD and approved by the Commission, contains the rules that apply to all labor service employees in cities and towns covered by the civil service law.

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<sup>2</sup> Mr. McDonough filed a separate appeal with the Commission. In a decision being issued the same day as this appeal, Mr. McDonough's appeal is being dismissed based on a lack of prosecution (CSC Case No. G2-12-56)

PAR.19(2), which pertains to labor service *appointments*, states in relevant part:

“When positions are to be filled on a permanent or temporary basis in the labor service, the appointing authority shall make requisition to the administrator<sup>3</sup> ... shall establish and maintain rosters for each departmental unit and by appropriate class containing the names, position titles and effective dates of employment of persons appointed to ... labor service positions ... in the service of a ... municipality after certification from labor service registers ...”

PAR.19(2) also states that “selection and original appointments shall be made as provided in PAR.09.” PAR.09 contains the so-called “ $2n + 1$ ” formula which states that appointing authorities may appoint only from among the first  $2n+1$  persons named in the “certification” willing to accept appointment, where the number of appointments is “ $n$ ”. Applied to appointments in the labor service, appointing authorities can only appoint from among the first  $2n+1$  [qualified] persons on the labor service register.

PAR.19(3) states in relevant part that:

“If an applicant whose name is registered for more than one title accepts a permanent appointment to any position in the labor service, the administrator or the local labor service director shall remove his name from the register for all other titles.”

G.L. c. 31, § 29, which pertains to labor service *promotions and changes in employment*, states in relevant part:

“An appointing authority shall, prior to any request to [HRD] for approval of a promotional appointment of a permanent employee in the labor service to a higher title in such service; or for approval of a change in employment of a permanent employee within such service from one position to a temporary or permanent position which is not higher but which has requirements for appointment which are substantially dissimilar to those of the position from which the change is being made, post a promotional bulletin. Such bulletin shall be posted for a period of at least five working days where it can be seen by all employees eligible for such promotional appointment or change in employment. Any

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<sup>3</sup> The City of Quincy, along with all other civil service cities and town in Massachusetts, with the exception of Boston, has been delegated to perform the duties and responsibilities of the Administrator (HRD) in regard to labor service appointment. PAR.20 requires each of these cities and towns to designate a Labor Service Director to perform these funcitno.

such request shall contain a statement that the posting requirements have been satisfied, indicating the date and location of the posting.”

PAR.19(5) pertains to labor service promotions and states in relevant part that”

“promotional appointments and changes of position under the provisions of M.G.L. c. 31, § 29 shall be made from among the same number of persons with the greatest length of service as the number specified in making appointment under PAR.09, provided that such persons possess the required qualifications and serve in eligible titles, as determined by [HRD]. “

Since the City decided to fill the Park Maintenance Person position as an original appointment under Section 28, and appoint an external candidate, Mr. McNamara was not eligible for appointment as his name was not on the labor service roster, nor should it have been, since PAR.19(3) required that his name be removed from this roster upon his appointment to another labor service position.<sup>4</sup>

*Conclusion*

For all of the above reasons, Mr. McNamara’s appeal under Docket No. G1-12-84 is hereby ***dismissed***.

Civil Service Commission

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Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on September 20, 2012.

A true record. Attest:

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Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must

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<sup>4</sup> Although Mr. McNamara has no standing to contest an original appointment made under Section 28, information submitted as part of this appeal raised issues regarding whether the City, when making original appointments to labor service positions, is complying with applicable civil service law and rules. To ensure that such requirements are being followed, the Commission has opted to inquire about this matter pursuant to its authority under G.L. c. 31, § 2(a). Information related to that inquiry is included in a separate order being issued the same day as this decision.

identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice:

Shelly Taylor, Esq. (for Appellant)  
Deirdre Hall, Esq. (for Respondent)  
John Marra, Esq. (HRD)